## UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF VERMONT

IN RE:		)
	MICHAEL J. BETIT	) Case No.: 10-10477 cab
	Debtor	) Chapter 12

## OBJECTION TO PROPOSED CHAPTER 12 PLAN AND CONFIRMATION THEREOF

TD Bank, N.A. (hereinafter "Lender"), secured creditor in the above-entitled Bankruptcy proceeding, objects to the confirmation of that certain Chapter 12 Plan dated August 3, 2010 proposed by Debtor Michael J. Betit. In support of the Objection, the Lender states as follows.

- 1. Debtor executed and delivered to Capitol City Auto Mart Inc. a Retail Installment Contract and Security Agreement dated September 12, 2008 (the "Contract") pursuant to which the Debtor borrowed \$26,774.50 to purchase a 2005 Chevrolet Silverado VIN No. 1GCHK29285E321906 (the "Vehicle"). The Contract was assigned to the Bank. A copy of the Contract is annexed hereto as <a href="Exhibit A">Exhibit A</a> and made a part hereof.
- 2. The Bank was granted a security interest in the Vehicle, as evidenced by the Contract and Certificate of Title annexed hereto as <u>Exhibit B</u> and made a part hereof.
- 3. Debtor is in default of the Contract, as monthly payments are due for the payments due February 12, 2010 through March 12, 2010 prepetition and for April 12, 2010 through August 12, 2010 post petition, totaling \$925.86 pre petition with late fee of \$154.83 pre petition and post petition payments totaling \$2,314.65.
- 4. The current payoff of the loan as of August 23, 2010 is \$23,081.04 with a per diem of \$4.51.
- 5. The plan filed in this case proposes to pay the Lender \$10,000 for the Vehicle at 4.50% interest over 60 months.
- 6. Debtor values the property at \$10,000 in his petition.
- 7. The Lender believes based on its information that the Vehicle is undervalued in the Plan.

- 8. The NADA Official Used Care Guide for Tuesday August 24, 2010 provides for a value of "Low Auction Value of \$12,000, "Average Auction Value of \$15,575" and "High Auction Value of \$19,175". See <a href="Exhibit C">Exhibit C</a> annexed hereto and made a part hereof.
- 9. Pursuant to Manheim.com/Internet MMR, for week ending August 18, 2010 National for a 2005 Chevrolet 2500HD Silverado Pickup 4wd V8, the value is Auction Above: \$20,200; Average: \$17,300; Below: \$14,350 and Est. Retail Above \$24,900; Average: \$21,900; Below: \$18,900. See <a href="Exhibit D">Exhibit D</a> annexed hereto and made a part hereof.
- 10. Market value of the Vehicle should be closer to the estimated retail and should be what Debtor pays for the Vehicle in the plan.

The plan should not be confirmed as proposed as the Vehicle is undervalued. Dated at Rutland, Vermont this 24<sup>th</sup> day of August, 2010.

TD BANK, N.A.

By:

Elizabeth A. Glynn, Esquire Ryan Smith & Carbine, Ltd.

PO Box 310

Rutland, Vermont 05702

324/709/357697

# **EXHIBIT A**

DETAIL INCTALL LITTER COLUMN				W.Dr
RETAIL INSTALLMENT CONTRACT	Seller CAPITOL CITY 1162 US ROUTE	2	Buyer MICHAEL	J. BETIT
AND SECURITY AGREEMENT	BERLIN, YT OF			NDLER POND ROAD
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### ADDITIONAL TERMS OF THIS CONTRACT AND SECURITY AGREEMENT

ADDITIONAL TERMS OF THIS CONT GENERAL TERMS: You have been given the opportunity to purchase the Vehicle and described services for the Cash Price or the Total Sale Price is the total price of the Vehicle and any services if you buy them over time. You agreed to purchase the items over time. The Total Sale Price is the vital price of the Vehicle and any services if you buy them over time. You agreed to purchase the items over time. The Total Sale Price shown in the TRUTH IN LENDING DISCOCUSIFIES assumes that all payments will be made as scheduled. The actual amount you will pay may be more or less scheduled. The actual amount you will pay may be more or less depending on your payment record.

We do not kriend to charge or obtest, and you do not agree to pay, any finance charge or fee, that is more than the maximum amount permitted for this sale by state or federal law. If you pay a finance charge or fee that is contrary to this provision, we will, instead, apply it first to reduce the principal balance, and when the principal has been pad in hull, retund it to you.

You understand and agree that we (or our affiliate) will earn commissions or fees on any insurance products, and may earn such less on other services that you buy through us or our affiliate. If any section or provision of this Contract.

If any section or provision of this Contract in full or in part at any time. Any partial prepayment will not excuse any tater scheduled payments unit you pay in hul.

A refund of any prepaid, unearned insurance premiums may be observed and the provision of the provision provision to the contract.

OWNERSHIP AND DUTIES TOWARD PROPERTY: By Giving was a scrutibulatorst in the Prometry are present and any provision.

poscy or certificate of insurance.

OWNERSHIP AND DUTIES TOWARD PROPERTY: By giving ownership and agree to the us a security interest in the Property, you represent and agriculturing:

s a security interest in the Property, you represent and agree to the showing:

A. Our security interest will not extend to consumer poods unless you acquire rights to them within 10 days after we enter into this Contract, or they are installed in or affixed to the Vehicle.

B. You will delend our interests in the Property against claims made by arrone else. You wild on whatever is necessary to keep our claim to the Property shead of the claim of anyone else.

C. The security interest you need to five claim of anyone else, can be added to the claim of any other of your general or secured creditors. You agree to sign any additional documents or provide us with any additional information we may require to keep our claim to the Property ahead of the claim of anyone else, You will not do anything to change our interest in the Property.

D. You will expel be Property in your possession in good condition and repair. You will use the Property for its intended and lawful purposes. Unless otherwise agreed in writing, the Property will be located at your address listed or page 1 of this Contract.

E. You will not attempt to sell the Property (unless it is property identified Inventory) or otherwise transfer any rights in the Property to anyone else, without our prior written consent.

You will not get a sea and assessments on the Property as they become due.

G. You will notify us of any loss or damage to the Property. You will provide us reasonable access to the Property for the purpose of inspection. Our entry and inspection must be accomplished leff.

DEFAULT: You will be in default on this Contract if any one of the following occurs (except as prohibited by law);

A You tall to perform any obSgation that you have undertaken in this Centract.

his Contract.

B. We, in good faith, believe that you cannot, or will not, pay or perform the obligations you have agreed to in this Contract.

If you default, you agree to pay court costs, disbursements, and reasonable attorneys fees if referred to an attorney not a salaried employee of the contract holder. You also agree to pay actual and reasonable out-of-pocket expenses incurred after referral in connection with the delinquency, repossession or foreclosure, including but not limited to storage charges, reconditioning expenses and collection expenses.

If an event of default cocurs as to any one of you, we may assercise our remedies against any or all of you.

REMEDIES: If you are in default on this Contract, we have all of the

If an event of default occurs as to any one of you, we may exercise our remedes against any or all of you.

REMEDIES: If you are in default on this Contract, we have all of the remedes provided by law and this Contract.

A Wie may require you to immediately pay us, subject to any refund required by law, the remaining unpaid balance of the amount financed, finance, trages and all other agreed charges.

B. We may pay taxes, asscsharges and all other tens or make repails to the Property if you have not done so. We are not required to do so, Any amount we pay, will be added to the amount you own us and will be due immediately. This amount will earn finance charges from the date paid at the post-maturity rate described in the PROMSE TO PAY AND PAYMENT TERMS.

C. We may require you to make the Property available to us at a place we designate that is reasonably comercient to you and us. We may immediately take possession of the Property by legal process or self-halp, but in-doing so we may not breach the peace or unawhithy enter onto your premisses. We may then self the Property and apply what we receive as provided by law to our reasonable expenses and then thoward your obgations.

E. Except when prohibited by law, we may sue you for additional amounts if the processed of a safe do not pay all of the amounts you over us.

you owe us.

By choosing any one or more of these remedies, we do not walve our right to later use another remedy. By dedding not to use any

RACT AND SECURITY AGREEMENT remedy, we do not give up our right to consider the event a default if happers again. To urgree that if any notice is required to be given to you of an intended sale or transfer of the Property, notice is reasonable if mailed to your lest known address, as reflected in our records, at least 10 days before the date of the intended sale or transfer for such other period of time as is required by law). You agree that, subject to your right to recover such property, we may take possession of personal property left in or on the Property securing tills Contract and taken into possession as provided above. INSURANCE: You anree to buy property insurance on the Property

may take possession of personal property left in or on the Property securing this Contract and taken into possession as provided above. INSURANCE: You agree to buy property insurance on the Property protecting against loss and physical damage and subject to a maximum deductible amount indicated in the PROPERTY INSURANCE section, or as we will otherwise require. You will name us as loss payee on any such policy. In the event of loss or damage to the Property, we may require additional security or assurances or payment before we allow insurance proceeds to be used to regal to replace the Property. You agree that if the insurance proceeds do not cover the smounts you still over us, you will pay the difference. You may purchase or provide the insurance through any insurance company reasonably acceptable to us. You will keep the insurance in tail force and effect until this Contract is paid in full.

If you fail, to obtain or maintain this insurance, or name us as a loss payee, we may obtain insurance to protect our interest in the Property. This insurance may he written by a company other than one you would choose. It may be written by a company other than one you would choose. It may be written by a company other than one you would choose. It may be written by a company other than one you would choose. It may be written by a company other than one you would choose. It may be written by a company other than one you would choose. It may be written by a company other than one you would choose. It may be written by a company other than one you would choose. It may be written by a company other than one you would choose. It may be written by a company other than one you would choose. It may be written by a company other than one you would choose it may be written by a company other than one you would choose. It may be written by a company other than one you would choose it may be written by a company other than one you would choose. It may be written by a company other than a rate you.

TERMS section until paid in full.

OBLIGATIONS INDEPENDENT: Each person who signs this contract agrees to pay this Contract according to its terms. This means the following:

A You must pay this Contract even if someone sise has also signed it.

B. We may release any co-buyer or guarantor and you will still be obligated to pay this Contract.

C. We may release any security and you will still be obligated to pay this Contract.

D. If we give up any of our rights, it will not affect your duty to pay this Contract.

E. If we extend new credit or renew this Contract, it will not affect your duty to pay this Contract.

WARRANTY: Warranty information is provided to you separately. WARKAN I: warrany information is promoted to you separately. WAIVER: To the extent permitted by law, you agree to give up your rights to require us to do certain things. We are not regulred to: (1) demand payment of amounts due; (2) give notice that amounts due have not been paid in the appropriate amount, time or manner; or, (3) give notice that we intend to make, or are making, this Contract immediately dise

#### THIRD PARTY AGREEMENT

THIRD PARTY AGREEMENT
By signing below you agree to give us a security interest in the Properly described in the SALE section. You also agree to the terms of this Contract, including the WAIVER section above, except that you will not be fable for the payments in requires. You interest in the Property may be used to satisfy the Buyer's obligation. You agree that we may tense, extend, change the Contract, or release any party or property without releasing you from this Contract. We may take these steps without notice or demand upon you.

You acknowledge receipt of a completed copy of this Contract.

Signature

NOTICE: ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED PURSUANT HERETO OR WITH THE PROCEEDS HEREOF, RECOVERY HEREUNDER BY THE DEBTOR SHALL HOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER.

IF YOU ARE BUYING A USED VEHICLE, THE INFORMATION YOU SEE ON THE WINDOW FORM FOR THIS VEHICLE IS PART OF THIS CONTRACT. INFORMATION ON THE WINDOW FORM OVERRIDES ANY CONTRARY PROVISIONS IN THE CONTRACT OF SALE.

#### ASSIGNMENT BY SELLER

Seller sells and assigns this Retail installment Contract and Security Agreement (Contract), to the Assignee, its aucossorn and assigns, including all its rights title and interest in this Contract, and any quarantee executed in connection with this Contract, Seller gives Assignee his power, either in its own manner or it Seller's name, to take all legal or other actions which Selve could have believe under this Contract, Selver gives Assignee his power, either in its own manner or its Seller's name, to take all legal or other actions which Selve could have believe under this Contract, (SEPARTAGEMENTS IT in the Assignment is made) under the Contract (SEPARTAGEMENTS IT in the Assignment is made).

- the terms of a separate agreement as indicated on page 1, the terms of this assignment are described in a separate writing(s) and not as provided below.)

  Seller warmants:

  A. This Contract represents a sale by Selve to Buyer on a time price basis and not on a cash basis.

  B. The statements contained in this Contract are true and correct.

  C. The down payment was made by the Buyer in the manner stated on page 1 of this Contract and, except for the application of any manufacturer's rebate, no part of the down payment was board or paid to the Buyer by Selver or Selver's representatives.

  D. This sale was completed in accordance with all applicable federal and state laws and regulations.

  E. This Contract is vast and enforceable in accordance with all applicable federal and state laws and regulations.

  F. The names and signatures on this Contract are not longed, Fedibous or assumed, and are true and correct.

  G. This Contract is vast and the Selver frost of all stems, is not subject to any claims or destorates of the Buyer, and may be sold or assigned by the Selver.

  H. A completely filled in topy of this Contract was delivered to the Buyer at the time of execution.

  I. The Verbide has been derivered to the Buyer in good condition and has been accepted by Buyer.

  J. Selver has on will perfect a security Interest in the Property in taxor of the Assignment, burchase this Contract man selection and the surface of the security of the service of



# EXHIBIT B

## VERMONTROES AND SELVE

### STATE OF VERMONT DEPARTMENT OF MOTOR VEHICLES

	\	
VEHICLEHULL IDENTIFICATION NO.	YEAR MAKE BODY/HULL	MODEL WEIGHT/LENGTH
	05 CHEV 4C	TK 05392
TGCHK29285E321906	05   CHEV   4C	
AXLES FUEL NO. NEW/USED	DATE PURCHASED METER READING	OWNERSHIP
CYL		
2 DIES 08 USED	09/12/08 59574 ME	
	ASSIGNMENT OF TITLE NO. VAL	IDATES THIS CERTIFICATI
DATE TITLED TITLE NO.	医生物 化二键 化多性多性 医二角性 医二角性 医二角性	
09/23/08 0923084004	J56 ( ) ( ) ( ) ( ) ( ) ( ) ( ) ( ) ( ) (	

NAME(S) & ADDRESS(ES) OF VEHICLE/VESSEL OWNER(S)

BETIT MICHAEL JOHN 326 CHANDLER POND RD S WHEELOCK, VT 05851 987 D-508003943331

FIRST LIENHOLDER NAME & ADDRESS DATE OF FIRST LIEN TD,BANK,NA 09/12/08 PO BOX 1377 LEWISTON, ME 04243

RELEASE OF LIENS

	(FIRST LIEN) INTEREST IN THE ABOVE DESCRIBED VEHICLE/VESSEL/ SNOWMOBILE IS HEREBY RELEASED	AUTHORIZED SIGNATURE	DATE	3
۲.	(SECOND LIEN) INTEREST IN THE ABOVE DESCRIBED VEHICLE/VESSEL/ SNOWMOBILE IS HEREBY RELEASED	AUTHORIZED SIGNATURE	DATE	



A CEREBEAN SINGIOVA

THIS IS YOUR CERTIFICATE OF TITLE. KEEP IN A SAFE PLACE.

## **EXHIBIT C**

### **NADA Official Used Car Guide** Tuesday, August 24, 2010

### **Vehicle Summary NADA Auction Value**

Period:

Data Period: 8/23/2010 - 8/29/2010

Region:

**New England** 

Reference #:

Vehicle Description: 2005 CHEVROLET TRUCK

VIN:

1GCHK29285E321906

Silverado 2500 HD-V8 **Extended Cab LT 4WD** 

Mileage:

125,000

Low **Auction Value** 

<u>Average</u> <u>Auction</u> Auction Value **Value** 

NADA Adjusted Value\*:

\$12,000

\$15,575

\$19,175

<u>Hìgh</u>

Options:

Turbo Diesel Engine

NADA assumes no responsibility or liability for any errors or omissions or any revisions or additions made by anyone on this report.
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<sup>\*</sup>Auction values displayed include typical equipment and adjustments for mileage and any of the following applicable accessories: engine size, drivetrain, and trim.

# **EXHIBIT D**

#### Vehicle Identification

Search:		Select Country:	US
Year:	2005	Select Region:	National
Make:	CHEVROLET	Seasonal Adjustment:	No
Model:	2500HD SILVERADO PICKUP 4WD V8		
Style:	EXT CAB 6.6L TDSL LT		

### **Auction Averages**

	Zeroes Indic	ate No Rece	nt Auction Sa	les. See "Transa	ctions"	
	For Wee	k Ending Au	g 18			
	Above	<u>Average</u>	Below	Jun 2010	Feb 2010	Aug 2009
Sale Price	\$20,766	\$16,300	\$11,834	\$0	\$0	\$20,000
Odometer	58,043	109,370	160,697	0	0	63,419
Total Sold All		1		0	0	4

Average Auction Odometer 110945

own under 'Transactions', above.	nore transac	e based on i	Prices a	
	10	I - Aug 30 201	Aug 23	
Insufficient Transactions To	Below	<u>Average</u>	<u>Above</u>	
Estimate Future Prices	\$14,350	\$17,300	\$20,200	Auction
	\$18,900	\$21,900	\$24,900	Est. Retail

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